

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

DWAYNE THOMAS,

Defendant.

15-CR-740 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

On April 13, 2017, Defendant Dwayne Thomas was sentenced principally to a term of imprisonment of 240 months, 180 months of which was to run consecutive to his undischarged term of imprisonment, following his plea of guilty to attempting to commit robbery in violation of 18 U.S.C. § 1951. At sentencing, the Court calculated Mr. Thomas' sentencing guidelines range to be 240 months' imprisonment, based on an offense level of 40, a criminal history category of IV, and a statutory maximum of 240 months' imprisonment. The Bureau of Prisons currently projects that Mr. Thomas will be released from prison on January 22, 2042.

On December 25, 2023, Mr. Thomas, proceeding pro se, filed a motion requesting that the Court consider a sentence reduction pursuant to Amendment 821. *See* Dkt. 95, 97. By way of Amendment 821, the United States Sentencing Commission ("Sentencing Commission") amended the United States Sentencing Guidelines Manual, effective November 1, 2023. Part A amends Guidelines § 4A1.1 by reducing from two points to one point the upward adjustment for offenders who committed the instant offense while under any criminal justice sentence, and by limiting this adjustment to defendants who received seven or more criminal history points. Part B adds Guidelines § 4C1.1, which provides a two-level offense level reduction for offenders with zero

criminal history points who meet specified eligibility criteria. The Sentencing Commission made these amendments retroactive.

The United States Probation Department has since issued a report advising that Mr. Thomas is ineligible for an Amendment 821 reduction because he does not meet the eligibility criteria under either the Status Points or the Zero-Point Offender amendment. *See* Dkt. 96. The Court agrees. Mr. Thomas is precluded from the status points reduction because he did not receive an enhancement for committing the instant offense while under a criminal justice sentence, and he is precluded from the zero-point offender offense level reduction because he does not have zero criminal history points. His motion is thus denied.

SO ORDERED.

Dated: June 7, 2024
New York, New York



Ronnie Abrams
United States District Judge